

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 15, 2009 at Knoxville

**STATE OF TENNESSEE v. MARSHALL WILLIAM WEAVER**

**Appeal from the Criminal Court for Davidson County**  
**No. 2008-I-1203     Mark J. Fishburn, Judge**

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**No. M2009-01519-CCA-R3-CD - Filed January 14, 2010**

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The defendant, Marshall William Weaver, appeals from the Davidson County Criminal Court's denial of his motion to withdraw his guilty plea to possession of cocaine with intent to sell. Because the defendant failed to show that manifest injustice required that he be allowed to withdraw his plea, the order of the criminal court is affirmed.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed**

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and NORMA MCGEE OGLE, J., joined.

Ryan C. Caldwell, Nashville, Tennessee, for the appellant, Marshall William Weaver.

Robert E. Cooper, Jr., Attorney General & Reporter; Benjamin A. Ball, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Janice Norman, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

On October 16, 2008, the defendant submitted a guilty plea to the Class C felony of possession with intent to sell less than .5 grams of cocaine in exchange for a four-year suspended sentence and a \$2,000 fine. On the same day, the criminal court accepted the plea and entered judgment accordingly. On November 14, 2008, the defendant moved to withdraw the guilty plea, alleging that he pleaded guilty while uninformed that he was forfeiting his right to appeal a certified question of law. The trial court appointed counsel and conducted a hearing on the motion on May 29, 2009.

In the hearing, the defendant testified that he thought he would be able to appeal "the whole verdict." He testified that he thought that was his right pursuant to

Tennessee Rule of Criminal Procedure 11. On cross-examination, he acknowledged that he understood the plea-submission proceedings and that he had pleaded guilty in criminal court before. He testified, however, that he thought that Rule 11 guaranteed him a right to appeal despite the guilty plea. A transcript of the guilty plea submission hearing was introduced as an exhibit.

Following the hearing, the trial court ruled that the guilty plea was knowingly and voluntarily entered, and it denied the motion to withdraw. The defendant then filed an apparently timely notice of appeal.<sup>1</sup>

Tennessee Rule of Criminal Procedure 32(f) prescribes terms for withdrawal of a guilty plea. After a defendant's "sentence is imposed but before the judgment becomes final" – the circumstance in the present case – "the court may set aside the judgment of conviction and permit the defendant to withdraw the plea to correct manifest injustice." Tenn. R. Crim. P. 32(f)(2).

The term "manifest injustice" is not defined either in the rule or in those cases in which the rule has been applied. Trial courts and appellate courts must determine whether manifest injustice exists on a case by case basis. *See State v. Crowe*, 168 S.W.3d 731, 741-42 (Tenn. 2005) (recognizing absence of definition for manifest injustice and citing examples of circumstances warranting withdrawal); *State v. Turner*, 919 S.W.2d 346, 355 (Tenn. Crim. App. 1995). The defendant has the burden of establishing that a plea of guilty should be withdrawn to prevent manifest injustice. *Turner*, 919 S.W.2d at 355.

To determine whether the defendant should be permitted to withdraw his guilty plea to correct manifest injustice, a court must scrutinize carefully the circumstances under which the trial court accepted the plea. An analysis of the plea submission process under Tennessee Rule of Criminal Procedure 11(b) facilitates an inquiry into the existence of manifest injustice. *See generally State v. McClintock*, 732 S.W.2d 268 (Tenn. 1987) (for rules concerning acceptance of guilty pleas); *State v. Mackey*, 553 S.W.2d 337 (Tenn. 1977) (same). Tennessee courts have allowed the withdrawal of guilty pleas to prevent manifest injustice when

(1) the plea "was entered through a misunderstanding as to its effect, or through fear and fraud, or where it was not made voluntarily"; (2) the prosecution failed to disclose exculpatory evidence as required by *Brady v. Maryland*, 373 U.S. 83, 83 S.

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<sup>1</sup> The notice reflects that it was executed on June 29, 2009, but the trial court clerk apparently affixed no filing stamp.

Ct. 1194 (1963), and this failure to disclose influenced the entry of the plea; (3) the plea was not knowingly, voluntarily, and understandingly entered; and (4) the defendant was denied the effective assistance of counsel in connection with the entry of the plea.

*Crowe*, 168 S.W.3d at 742 (footnotes omitted). Courts have also found that manifest injustice resulted from the trial court's failure to advise a defendant of the appropriate sentencing range, to apply the appropriate sentencing statute, or to inform a defendant of the consequences flowing from the guilty plea. *See State v. Antonio Demonte Lyons*, No. 01C01-9508-CR-00263, slip op. at 23-24 (Tenn. Crim. App., Nashville, Aug. 15, 1997). A guilty plea, however, should not be withdrawn merely because the defendant has had a change of heart. *Crowe*, 168 S.W.3d at 743; *Ray v. State*, 224 Tenn. 164, 170, 451 S.W.2d 854, 856 (1970). Nor should a defendant's dissatisfaction with an unexpectedly harsh sentence be sufficient justification for a withdrawal. *Crowe*, 168 S.W.3d at 743; *Clenny v. State*, 576 S.W.2d 12, 15 (Tenn. Crim. App. 1978).

The transcript of the guilty plea submission hearing reflects that the defendant, who was 38 years of age at the time, had an eleventh grade education and a "GED." During the trial court's Tennessee Rule of Criminal Procedure 11(b) examination of the defendant, the judge asked whether the defendant understood that, if he accepted the guilty plea, "this will end your case in the courts once and for all, there will be no further plea discussions, no jury trial, sentencing hearing, appeals or anything else." The defendant answered, "Yes, sir."

Because the record supports the trial court's conclusion that the plea was knowingly and understandingly entered, and because the defendant failed to carry his burden of showing manifest injustice that required leave to withdraw his plea, the order of the criminal court is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE